

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHAN BRADLEY FOUTS,

Plaintiff,

v.

DIANE HOULTON, et al.,

Defendants.

CASE NO. 3:23-CV-5594-RAJ-DWC

ORDER FOR DEFENDANTS TO
SHOW CAUSE RE: MOTION FOR
SUMMARY JUDGMENT

This prisoner civil rights case has been referred to United States Magistrate Judge David W. Christel. On February 8, 2024, Defendants filed a motion for summary judgment on all claims. Dkt. 46. Though the motion is styled as one for summary judgment, the arguments raised therein focus solely on the sufficiency of the pleadings. *See id.* Additionally, Defendants submit no evidence in support of their motion and maintain this case is resolvable without discovery. *Id.*; *see also* Dkts. 51, 52 (arguing discovery would be futile).

Upon review, it appears Defendants' motion is better reviewed as a motion for judgment on the pleadings, which may be filed "[a]fter the pleadings are closed—but early enough not to delay trial." *See* Fed. R. Civ. P. 12(c). Consistent with the arguments Defendants raise, motions

1 for judgment on the pleadings may be predicated on either (1) the lack of a cognizable legal
2 theory, or (2) insufficient facts to support a cognizable legal claim. *See Balistreri v. Pacifica*
3 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). In reviewing such motions, the Court considers
4 only the pleadings, documents incorporated by reference into the complaint, and information
5 “contained in materials of which [it] may take judicial notice.” *Heliotrope Gen., Inc. v. Ford*
6 *Motor Co.*, 189 F.3d 971, 981 n.18 (9th Cir. 1999); *see United States v. Ritchie*, 342 F.3d 903,
7 908 (9th Cir. 2003).

8 Accordingly, Defendants are ordered to show cause why their motion for summary
9 judgment should not be construed as a motion for judgment on the pleadings. If Defendants fail
10 to show cause on or before February 26, 2024, the Court will treat the motion as one submitted
11 for judgment on the pleadings.

12 Dated this 23rd day of February, 2024.

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14 David W. Christel
15 Chief United States Magistrate Judge
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